REMARKS

Claims 1-5, 8-16, 21-27, 30, 31, 35-38, 40-42, 46-50, 52, 56 and 57 are pending. Claims 1-5, 8-16, 21-27, 30, 31, 35-38, 40-42, 46-50, 52, 56 and 57 are rejected. Applicant traverses these rejections and respectfully requests reconsideration of the rejected claims in light of the following remarks.

Claim Rejections Under 35 U.S.C. §102

Claims 1 and 8-16, 23, 46, 52, 56 and 57 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,116,563 to Thomas et al. ("Thomas").

Thomas is directed towards a process of producing free formed prongs for a mechanical fastening system and discloses a relationship between the included angles of the prongs relative to a substrate plane and the shear strength of the fastening system. Thomas does not disclose or suggest that the head of the touch fastener has an overall height that is greater than 55 percent of an overall height of the fastener element; nor does Thomas disclose or suggest a ratio of an overall height of the crook to an entrance height that is greater than 0.6. Examiner concedes that the drawings of the cited references are not to scale, but contends that the claimed relationship and ratio are nevertheless disclosed in Thomas's FIGs. 1, 7A, 7B, 9A, and 9B.

There is no indication the figures of Thomas were drawn to scale, and it must be presumed that the drawings are not to scale and cannot be used to establish anticipation relating to size or proportion. "[P]atent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." *Go Medical Industries Pty., Ltd. v. Inmed Corp.*, 471 F.3d 1264,1271 (C.A.Fed. 2006); *Hockerson-Halberstadt, Inc. v. Avia Group. Int'l, Inc.*, 222 F.3d 951, 956 (Fed. Cir. 2000); see also *In re Wright*, 569 F.2d 1124, 1127 (C.C.P.A. 1977) ("Absent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value."). In Hockerson-Halberstadt, a patent owner's argument hinged on an inference drawn from certain figures about the quantitative relationship between the respective widths of a groove and fins in a heel of an article of footwear. The court held that precise proportions cannot be

read into patent drawings which do not expressly provide such proportions. *Hockerson-Halberstadt*, 222 F.3d 951, 956 (Fed. Cir. 2000). Similarly, in Nystrom, a claimed ratio (about 40:1) was not anticipated by a prior art reference drawing purporting to show a 39:1 ratio. *Nystrom v. Trex Co.*, 374 F.3d 1105 (Fed. Cir. 2004). Thomas fails to disclose or suggest any particular relationship between the height of the fastener head and the overall height of the fastener element; nor does it disclose any ratio between the overall height of the crook to an entrance height of the fastener. Therefore, for at least these reasons, Applicant requests that the rejection of claims 1 and 46 and any corresponding dependent claims be withdrawn and these claims be allowed.

Claim Rejections Under 35 U.S.C. §103

Claims 1-5, 8-16, 21-27, 30, 31, 35-38, 40-42, 46-50, 52, 56 and 57 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication US 2003-0012921 A1 to Gallant et al. ("Gallant") in view of Thomas.

Gallant discloses a method of forming a mold having cavities for molding hook fastener elements and a resulting fastener formed by the mold. Examiner concedes that Gallant fails to disclose 1) a head that has an overall height, measured perpendicular to the sheet-form base from a lowermost extent of the tip to an uppermost extent of the head, that is greater than 55 percent of an overall height of the fastener element, measured perpendicular to the sheet-form base and 2) a ratio of an overall height of the crook, measured perpendicular to the sheet-form base from a lowermost extent of the tip to an uppermost extent of the crook, to an entrance height measured perpendicular to the sheet-form base below a lowermost extent of the tip, that is greater than 0.6. However, Examiner contends that it would have been obvious for a person of ordinary skill in the art to have a fastener with the aforementioned relationship and ratio through Thomas's disclosure of a relatively longer fastener shank projecting longitudinally from a base to provide deeper penetration into a receiving surface to allow the heads to intercept or engage a greater number of strands or fibers in combination with the fastener of Gallant. Applicant respectfully disagrees.

Gallant and Thomas both fail to disclose or suggest any particular relationship between the height of the fastener head and the overall height of the fastener element or any ratio between the overall height of the crook to an entrance height of the fastener. Applicant submits that claims 1, 24, and 46 and their dependent claims are non-obvious over Gallant in view of Thomas for at least the reason that neither cited reference or combination of references suggests nor enables a head of a touch fastener having an overall height that is greater than 55 percent of an overall height of the fastener element or a ratio of an overall height of the crook to an entrance height of the fastener that is greater than 0.6.

Regarding claim 35, Examiner concedes that Gallant and Thomas fail to disclose a fastener element having a bulk aspect ratio of more than 0.020 inch (0.51 mm). However, Examiner contends that it would have been obvious for a person of ordinary skill in the art to have a fastener with the aforementioned bulk aspect ratio through optimization of proportions in a prior art device, citing In re Reese. Applicant respectfully disagrees. In re Reese held that optimum proportions of ingredients for a medical carrier (e.g. tablet) were obvious because the improved results derived from the optimum proportions stemmed from "experimentation of an obvious nature." *In re Reese*, 290 F.2d 839, 844 (C.C.P.A. 1961). Gallant and Thomas provide no suggestion or motivation of experimenting with the material ingredients (composition) of the fastener element, let alone a bulk aspect of a touch fastener element, defined as a ratio of the product of an overall length of the fastener element and fastener element thickness, to an overall height of the fastener element; nor does a bulk aspect of more than 0.020 inch (0.51 mm) flow naturally from their disclosures.

The Examiner takes official notice that a fastener component having two crooks and an upper well is well known in the art. For the record, Applicants do not concur that finding such elements in the prior art makes reciting them in connection with or in the context of a broader claimed invention obvious. Thus, Applicants do not concur with the Examiner's official notices, and don't believe that patentability of the claims is determined by such notices.

Applicant respectfully submits that all claims are non-obvious over Gallant in view of Thomas, for at least the reasons outlined above, and respectfully request a Notice of Allowance.

CONCLUSION

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue, or comment does not signify agreement with or concession of that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment. The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of this patent application.

Please apply any other charges or credits to deposit account 06-1050, referencing Attorney Docket No. 05918-339001.

Respectfully submitted,

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